

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Avenue, N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

*Handwritten initials: HQ*

**DEC 21 2004**

FILE:

Office: LOS ANGELES DISTRICT OFFICE

Date:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Handwritten signature: Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 37-year-old native and citizen of the Philippines who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a U.S. citizen. He seeks a waiver of inadmissibility in order to remain in the United States with his wife and adjust his status to that of a lawful permanent resident under INA § 245, 8 U.S.C. § 1255, as the beneficiary of an approved immediate relative petition filed on his behalf by his U.S. citizen wife.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly.

On appeal, counsel contends that refusal to admit the applicant will result in extreme hardship to his wife. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's having fraudulently obtained and used a visa in a false name in order to procure admission to the United States. *Decision of the District Director* (September 17, 2003) at 2. The applicant does not contest the district director's determination of inadmissibility. The question on appeal is whether he qualifies for a waiver. Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 1182(i)(1). A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien herself is not a permissible consideration under the statute.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining

whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Ninth Circuit Court of Appeals has held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant’s wife [REDACTED] is a 34-year-old U.S. citizen born in Los Angeles, California, to U.S. citizen parents, also born in the United States. She married the applicant in 1998. There were no children of the marriage at the time the waiver application was filed. [REDACTED] indicates that she gave birth to the couple’s first child in 2002, although there is no birth certificate on record. Her parents and 2 siblings live in California; a third sibling resides in Arizona. [REDACTED] parents are in their early 60’s and suffer from medical conditions including diabetes, high blood pressure, asthma, vertigo and equilibrium problems due to an ear infection, and a herniated disc. Counsel contends that [REDACTED] faces extreme hardship if she were to relocate to the Philippines due to her asthma, back injury, and “very heavy menstrual flows.” *Brief in Support of Appeal*, at 7. She does not speak or understand any Philippine languages, and is concerned that she could not obtain the necessary medical treatment for these conditions there. Counsel further asserts that she faces extreme hardship in that she would have to abandon her career and would find it difficult to obtain employment as a “marketing/customer service/sales assistant” in the Philippines, particularly in light of the language barrier. *Brief in Support of Appeal*, at 8.

The AAO notes that counsel also stresses the hardship faced by the applicant’s family members in the Philippines, and asserts that the district director improperly failed to consider the asserted harm in the hardship determination. Specifically, counsel notes that the applicant has helped his younger sister pay for

college, assisted his brother's troubled business, paid his mother's mortgage, and paid for possibly life-saving emergency medical expenses for his nephew. The AAO acknowledges that evidence of the general circumstances surrounding an applicant's extended family in the applicant's home country may be relevant to the qualifying relative's ability to adjust should he or she relocate there to avoid separation from the applicant. Nevertheless, it was appropriate for the district director to note that these individuals are not qualifying relatives under the statute and it would be improper to weigh the potential hardship to them if the applicant is refused admission in determining the applicant's statutory eligibility for the waiver.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if the applicant is refused admission, particularly if she remains in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. There is insufficient evidence to conclude that the medical conditions asserted in this case are significant and that they, alone or considered in the aggregate with other factors, amount to an extreme hardship if the applicant is refused admission. There is also no indication that [REDACTED] could not mitigate the effects of hardship by visiting the applicant if she and the child remained in the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

While the Ninth Circuit places particular emphasis on consideration of the impact of separation of the family, the waiver is nevertheless not to be granted in every case where possible separation is at issue. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9<sup>th</sup> Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.") In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative rises beyond the common results of deportation to the level of extreme.

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.